



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 13, 1995

Mr. Gary Keane  
General Counsel  
Dallas-Fort Worth International Airport  
P.O. Drawer 619428  
DFW Airport, Texas 75261-9428

OR95-1218

Dear Mr. Keane:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29978.

The Dallas/Fort Worth International Airport (the "airport") has received a request for the proposal and the contract for the noise monitoring system at the airport. Pursuant to section 552.305 of the Government Code, we have notified the Flood Group ("Flood"), the third party whose interests are implicated by this request for information. Flood asserts that all of section II of the proposal and figures I-3, I-4, I-5, and I-6 constitute trade secrets and are protected from public disclosure by sections 552.104 and 552.110 of the Government Code.

Flood attempted to protect this information by designating parts of the proposal as restricted from required public disclosure under the Texas Open Records Act. A party can not simply identify information as confidential and expect that it will then be excepted from required public disclosure under the Open Records Act. Open Records Decision No. 575 (1990) at 3. Flood also asserts that a provision in the contract itself declaring that the terms of the proposal will be kept confidential makes the proposal "information deemed confidential by law" under section 552.101. This office has consistently held that a governmental body cannot by contract or agreement make information confidential when it is not otherwise authorized to do so. Open Records Decision No. 627 (1994) at 4, 5.

Flood next claims that section 552.104 of the Government Code protects this information from required public disclosure. As Flood itself notes, section 552.104 is intended to protect the interests of governmental bodies. Open Records Decision No. 592 (1991) at 8. In this instance, the airport has neither claimed the protection of section 552.104, nor advanced any arguments in its favor; therefore, we believe that the information at issue here is not protected under section 552.104.

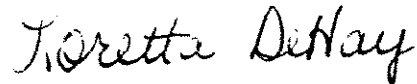
Flood finally argues that the information is excepted from disclosure under section 552.110 of the Government Code. In agreement with Flood, you have expressed your belief that "this highly technical information" is protected by section 552.110. The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.*

Restatement of Torts § 757 cmt. b (1939) (emphasis added). We must accept a claim that a document is excepted as a trade secret if a prima facie case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. In this case, Flood has made a prima facie case that the information consists of trade secrets, the airport has supported that assertion, and we have not received an argument that rebuts that claim as a matter of law. Therefore, section II of the proposal and figures I-3, I-4, I-5, and I-6 may be withheld from required public disclosure as trade secrets under section 552.110. Open Records Decision Nos. 552 (1990), 550 (1990).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/PIR/rho

Ref.: ID# 29978

Enclosure: Submitted document

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